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EXAMINER

O MALLEY, KATHRYN S

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 11

Application Number: 09/785,382
Filing Date: February 16, 2001
Appellant(s): CORREA ET AL.

John D. Gugliotta
For Appellant

EXAMINER'S ANSWER

MAILED
SEP - 9 2003
GROUP 3700

This is in response to the appeal brief filed 28 July 2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 1-10 and 12-17 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

3,949,765	VALLIS	4-1976
4,356,141	WEISS	12-1982
4,955,145	SCIVOLETTO	9-1990
5,485,931	BARR, JR.	1-1996
6,364,165	SAMPSON ET AL.	4-2002
4,144,022	BRAULKE, III	6-1978

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1 and 3-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Vallis.

Vallis discloses a blow dryer apparatus with an elongated handle 10 and extending head along a center line and a nozzle and air outlet port 14 directed

perpendicularly from said center line. The apparatus also includes a rim and a brush attachment that covers the air outlet port. Note column 2, line 64- column 3, line 15 and Figure 3. Furthermore, the brush attachment has a flattened, curved outer surface and a semi-cylindrical base 1; supports a plurality of bristles 7 and 8; and forms a plurality of air dispersion orifices 4. These orifices are spaced to allow airflow between adjacent bristles. Note column 2, lines 11-20 and Figures 1 and 2.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vallis as applied to claim 1 above, and further in view of Weiss.

The apparatus disclosed by Vallis does not comprise a power cord or hook grasping means as claimed. However, Weiss discloses a similar apparatus, a hair dryer, that comprises both of these elements. Note column 2, lines 54-60; column 5, lines 30-32; and Figure 2. As storing a hair dryer with a hook and powering it with a power cord is taught by Weiss and provides convenient storage and would lead to improved productivity in professional applications, it would have been obvious to one of ordinary skill in the art to modify Vallis's blow dryer with Weiss's power cord and hook grasper.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vallis as applied to claim 3 above, and further in view of Scivoletto.

The plurality of brush attachment means disclosed by Vallis does not comprise tethers as presently claimed. However, Scivoletto discloses a similar apparatus that does. Scivoletto's blow dryer attachment is attached with a tether, or elastic strap 28, designed to circumscribe the head of the blow drier. Note column 2, lines 56-61 and

Figure 1. As the use of tethers in hair dryer attachment devices is taught by Scivoletto to produce a snug fit, it would have been obvious to one of ordinary skill in the art to achieve the efficient drying of this snug fit by modifying Vallis's plurality of attachment means with Scivoletto's tether.

Claims 7 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vallis as applied to claim 1 above, and further in view of Barr, Jr and Sampson.

While the blow dryer disclosed by Vallis does not comprise a wall mount as claimed, Barr discloses a similar apparatus that does. Barr's hair dryer caddy is a wall mount shaped to house a hair dryer and accessories, such as brushes. Note column 2, lines 38-50 and Figure 1. As caddies of this sort are convenient for organized storage and easy access, it would have been obvious to one of ordinary skill in the art to modify Vallis's apparatus with Barr's caddy. Furthermore, Sampson teaches a bathroom storage device with a rear surface 102 having a pair of blade contacts 112 for insertion into an electrical outlet. Note Figure 5. As Sampson teaches the convenience of using an electrical outlet for wall mounting, it would have been obvious to one of ordinary skill in the art to modify Barr's caddy with Sampson's blade contacts.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vallis as applied to claim 1 above, and further in view of Braulke, III.

Vallis does not teach a spray element with a trigger formed integral to the directional head for providing fluid mist. However, in a similar hair drying apparatus Braulke, III teaches such a mechanism. Note column 3, lines 27-53; column 3, line 65-column 4, line 8; and Figures 3 and 5. As Braulke teaches the benefit of a spray bottle

for additional hair treatment in an apparatus such as that taught by Vallis, it would have been obvious to one of ordinary skill in the art to modify Vallis's hair dryer with Braulke, III's spray mechanism.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vallis, Barr, Jr., Sampson, and Braulke, III as applied to claims 7 and 15 above.

Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vallis.

Vallis discloses the claimed invention except for the diameters. It would have been an obvious matter of design choice to vary the diameter of Vallis's apparatus, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vallis.

Vallis discloses the claimed invention except for using wood as the material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make Vallis's brush out of wood, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Further, note that Depoyian teaches a similar attachable brush head made out of wood. See column 3, lines 46-49 and Figure 8.

(11) Response to Argument

Regarding the Arguments against the rejections of claims 1 and 3-5 under 35 U.S.C. 102(b), Examiner again respectfully disagrees. In page 7 of the Appeal Brief, applicant states that the rejection is inappropriate because several of the features presently claimed are undisclosed by Vallis. Several of these features bulleted in Applicant's arguments, namely a brush attachment of a specific diameter, shape, or material, are not included in claims 1 or 3-5, and therefore relying on their absence to argue the rejection is inappropriate. Furthermore, Examiner has repeatedly argued (see Response to Arguments in papers 6 and 8) that the other features bulleted in Applicant's arguments on page 7 of the Appeal Brief, namely a directional head having an angularly disposed directional nozzle, a brush attachment attached about a peripheral rim, a semi-cylindrical brush attachment base, and air dispersion orifices spaced and patterned between attached bristles are present in the apparatus taught by Vallis. As Applicant has had three opportunities and still has provided no information as to why this might be an incorrect interpretation of either the present claims or the apparatus taught by Vallis, Examiner holds that these aforementioned features are in fact present in Vallis, and therefore the rejection under 102(b) is appropriate.

Regarding the Arguments against the rejections of claims 2, 6-10, and 12-17 under 35 U.S.C 103(a), Applicant argues that Examiner has not properly presented a prima facie case of obviousness. Examiner disagrees as the non-obviousness of each limitation presently claimed that is not anticipated by Vallis has been supported in the rejection by demonstrating the lack of novelty of each such limitation and the

motivations for one of ordinary skill in the art to apply these limitations to the apparatus taught by Vallis.

Regarding the arguments on pages 8 and 9 of the Appeal Brief that Weiss does not have an *integral* power cord and hook, thereby rendering the rejection of claim 2 inappropriate; that Scivoletto does not have tethers that are *integral* to the brush attachment, thereby rendering the rejection of claim 6 inappropriate; and that Barr, Jr. does not teach blades that insert into an electrical outlet *to provide power* to the blow dryer, thereby rendering the rejection of claim 7 inappropriate; none of these limitations are claimed. Examiner again points out that it is inappropriate to use unclaimed limitations as a basis for arguments against a rejection.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

KSO 
September 8, 2003

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